

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of	)	
	)	
Acceleration of Broadband Deployment	)	WC Docket No. 11-59
Expanding the Reach and Reducing the Cost of	)	
Broadband Deployment by Improving Policies	)	
Regarding Public Rights of Way and Wireless	)	
Facilities Siting	)	

**COMMENTS OF THE CITY OF LUBBOCK, TEXAS**

These Comments are filed by the City of Lubbock in response to the Notice of Inquiry (“NOI”), released April 7, 2011, in the above-entitled proceeding.

**INTRODUCTION**

Lubbock is located on the plains of West Texas, with a population of about 230,000, and a land area of approximately 123 square miles. There are over 1,100 miles of streets and 550 miles of alleys in the City.

**UTILITIES**

As with all cities, there are many utilities that share the right-of-way in order to provide service to the residents and businesses of the City. The list of utilities includes water, sanitary sewer, storm sewer, two electric companies, and two gas companies, in addition to the telecommunication providers in the City.

In the City’s financial system, there are 139 different telecommunication companies that have been approved to provide service, and utilize the public right-of-way, at one time or another. However, only 42 of these companies have paid any fees for their use of the public right-of-way this fiscal year (since October 1, 2010). Of the 42 companies that have paid a right-of-way use fee this fiscal year, ten have paid less than \$100, and six have paid more than \$10,000. AT&T is the largest telecommunication user of the right-of-way in Lubbock, and they have paid 80% of the fees for right-of-way use among the telecommunication companies.

**PERMIT HISTORY**

A formal permit process for utility work allowed within the public right-of-way has only been in place for a short time, since 2007. Some of the issues that led to the required permit are:

- Pavement failures at utility cut locations
- Utility cuts in new streets
- Utility trench and pit settling due to improper compaction
- Citizens unaware of the work occurring next to their property
- City unaware of the work occurring in the right-of-way
- Lanes of traffic being blocked on major roadways
- Inadequate barricades and traffic control of work areas
- Open pits left unattended for months at a time
- Above ground facilities installed blocking pedestrian access or sight distance

These examples of problems can be attributed to work being done by telecommunication companies, as well as other public and private utilities.

These types of problems and citizen complaints led the City Council to direct the staff to prepare a comprehensive Right-of-Way Management Ordinance, including a permitting system, for the franchised and other utilities approved to work in the right-of-way.

## **PERMIT PROCESS**

Registration of the utility company and their contractors or subcontractors is required as a prerequisite to obtaining a permit. The registration process includes information of the type of utility, contact numbers, proof of insurance, and other general data on the Right-of-Way User. Registration is only required once per Right-of-Way User, with the exception that the information has to be updated annually, and copies of the insurance certification must be submitted upon its expiration.

An application for an individual permit is required prior to any work in the right-of-way for the utilities and their contractors.. The application would include such information as who was doing the work, the location of the work area, what kind of work is being performed and when the work will be done. Drawings would typically be included as part of the application.

The permit would be issued upon review and approval of the application.

Currently, the City of Lubbock does not charge a fee for permit registration, permit application, review of an application, issue of a permit, or inspection of construction being performed by a utility or their contractors approved to be working in the right-of-way.

## **PERMIT TIMELINESS**

Nearly all permits are issued by the next business day following submittal of the permit application. The majority of permits are issued the same day application is made. The exception to next day approval would be if there was a problem with the application, such as proposed location, methodology, or lacking information in the submittal.

Also, submittal of a large project such as installation of several miles of cable could delay review and approval. However, we encourage utilities to work with the staff ahead of time on large

projects to try and avoid unnecessary delays. The staff has pre-approved several of AT&T's projects prior to formal permit application to assist the utility with timeliness of their project.

Under the current ordinance, the City will issue a permit within five business days unless exceptions listed in the ordinance are encountered.

### **TOWER SITING – SHOT CLOCK RULING**

Tower sites are required for approval by a zone case in all zoning districts except industrial. The zone case is first heard by the Planning and Zoning Commission, that meets once a month, and the Commission then makes a recommendation to the City Council, that meets twice a month. Determinations on tower sites are made in less than 90 days.

According to the City of Lubbock Planning Director, he only recalls one tower site zone case that has not been approved. Historically, he said, cell tower applicants have made extremely good efforts in meeting with and educating the adjacent residents and businesses prior to the zoning hearings.

### **OTHER FACILITIES DEVELOPMENT IN RIGHT-OF-WAY**

The NOI requested comments concerning placement of telecommunication equipment on public facilities, such as street lights, traffic signals, and water towers. The City of Lubbock would offer the following comments to these equipment placements:

Private equipment on the public street lights could limit the City from its own use of the street light poles for a wireless system or automated meter reading. The street light poles are not designed to carry multiple facilities, and would be subject to wind load failures.

Traffic signal poles are also not designed for multiple facilities, but for their intended traffic safety use. Signal poles do not have one standard arm length, and the piers are designed for that arm length and the equipment planned for the arm and shaft, such as signal heads, signs, oscillation damper, Opticom receiver, and video detection. Also, the City currently uses spread spectrum 900 MHZ, low power radios for communication to approximately one half of the traffic signals in the City. There is a concern that there may be radio interference, affecting communication with the traffic signals, if telecommunication radios/antennas are installed at close proximity.

Also of concern is the history of responsiveness of telecommunication companies that have their facilities hanging on normal wood utility poles owned by the City. When a pole is proposed to be replaced or relocated, in many instances it required numerous telephone calls and several months for the telecommunication company to address their contact conflict. This kind of delay cannot be allowed for traffic signal or street lighting conflicts in order to preserve the public health, safety and welfare.

Water towers currently are being utilized for wireless communication antennas. There are at least two communication antennas on each of the public water towers in the City. Most recently

the lease agreement for the antenna use is \$25,000 per year and the revenue is used to help pay the maintenance costs for the water tower. However, access to the facility during certain parts of the day can be a problem since the water towers have security fencing. Security for the public water system would take precedence over any other secondary uses of the public infrastructure. However, the City staff is not aware of any problems to date with owners of antennas on water towers being able to access the site when necessary.

## **CONSISTENT OR DISCRIMINATORY/DIFFERENTIAL TREATMENT**

As was previously stated, a number of utilities utilize the public right-of-way in Lubbock. It is our belief that the telecommunication companies are treated fairly and equitably, and are not receiving unreasonable or discriminatory treatment in comparison with the other utilities in the right-of-way.

## **CURRENT TELECOMMUNICATION CONCERNS**

1. Of particular concern is the size of the above ground facilities that telecommunications are attempting to place in the public right-of-way. These “boxes” are taking up much of the available area for other utilities and public uses within the available space.

As is the normal case, public right-of-way is primarily used for the transportation needs of the public.

In Lubbock, the normal right-of-way for streets allows for an approximate “parkway” (area between the curb and the right-of-way line) width of ten feet. Within this parkway width, sidewalks, driveways, curb ramps, traffic signals, street lights, street name markers, traffic control signs, and utilities all have to share the same area.

Lubbock also has alleys. Alleys are typically 20 feet in width and are the primary location of all utilities that service abutting properties. Lubbock also has automated solid waste pickup in the alleys requiring dumpsters scattered throughout all the alleys in the City. Alleys also provide access to the rear of properties to the property owners, and to the utility companies for access to their utilities. A growing amount of the alleys in Lubbock are paved, with the center 10 feet of the 20 foot alley paved with concrete pavement. The outside five feet on either side is reserved for utilities and solid waste containers.

Thus the available right-of-way width is cluttered with public and private utility needs, and the number of users and uses have proven to be a problem in coordinating a viable location for all these needs.

In recent years, telecommunication companies have been installing large boxes, or cabinets, within the right-of-way for their facilities. These large boxes sometime encroach into sidewalk areas if located in the street “parkway” and into the normal ten foot travel path in alleys. They create problems for other utilities to locate their facilities in the area assigned for their particular service. The boxes also create problems for the abutting property owners that are responsible for maintaining their property, fences, and parkway area. The boxes often create view obstructions for the travelling public.

2. Generally, it seems that the day to day Right-of-Way Management duties of the City staff are more weighted toward responding to issues and problems with telecommunication companies

than the other utilities serving the citizens of Lubbock. Telecommunication companies generate more citizen complaints by the work they and their contractors are performing in the public right-of-way.

Examples of the complaints include not being notified of work adjacent to their property, damage to yards, fences, sprinkler systems, parking on their private property, driveways being blocked, improper traffic control, deep pits being left open for months at a time, the large boxes installed adjacent to their property, and alleys blocked for weeks at a time.

From the City's standpoint, the telecommunication companies seem to create more problems with improper cutting, backfilling and pavement repairs of streets and alleys.

Telecommunication companies have historically been much more difficult to work with in adjusting or relocating their lines for public infrastructure improvement projects in the right-of-way. They often delay a major street, drainage, water or sewer project for many months due to their lack of response. These delays result in the citizens of the City not being able to enjoy the "public" right-of-way and major capital projects are delayed for extended periods of time.

## **POSSIBLE ACTIONS TO ADDRESS CURRENT AREAS OF CONCERN**

The NOI requested interested parties to suggest specific actions the Commission could take to improve policies regarding rights-of-way and wireless siting. The suggestion of the City of Lubbock is for the Commission to take steps toward instilling in the telecommunication companies a change in corporate culture to become good tenants in the public right-of-way.

With the fees private utility companies pay to municipalities like the City of Lubbock, the telecommunication companies certainly are entitled to occupy the right-of-way. But they have an obligation to share that right-of-way with the travelling public, the other utilities, and with the municipalities attempting to manage all the different users and multi-uses that occur in the public right-of-way. The telecommunication companies should strive to be good neighbors to the adjacent private property owners for whom they are providing service. The companies should become much more responsive to the needs of the municipality and the general public on infrastructure improvement projects.

## **SUMMARY**

In summary, the City of Lubbock believes the City is responsive to telecommunication companies, other utility companies, permit requests for use of the public right-of-way, and that the City has been timely in the issuance of utility permits. The telecommunication companies have been treated fairly and equitably with the other utilities, and the City will continue to manage all the different users and uses of the public right-of-way to the best advantage to all the users.

The City does ask the Commission to work with the telecommunication industry to stress the importance of being good tenants and good neighbors as they are working in the public right-of-way.

## **CONCLUSION**

The City of Lubbock would like to thank the Commission for its efforts to better understand the practices and policies surrounding local governments' management of the public rights-of-way.

We strongly urge the Commission to consider our comments, as well as those submitted by communities across the country, before taking any action that may adversely affect local governments' rights-of-way authority.

Respectfully submitted,

A handwritten signature in cursive script that reads "Marsha Reed".

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